

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Chris Carson, Esq., SBN 280048  
Dennis Price, Esq., SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Ashwin N. Patel**, in individual and  
representative capacity as trustee of  
the Patel Living Trust; and Does 1-  
10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Defendant Ashwin N. Patel, in individual and representative capacity as trustee of the Patel Living Trust; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Ashwin N. Patel, in individual and representative capacity as

1 trustee of the Patel Living Trust, owned the real property located at or about  
2 1787 Monterey Rd., San Jose, California, in March 2017.

3 3. Defendant Ashwin N. Patel, in individual and representative capacity as  
4 trustee of the Patel Living Trust, owned the real property located at or about  
5 1787 Monterey Rd., San Jose, California, in June 2017.

6 4. Defendant Ashwin N. Patel, in individual and representative capacity as  
7 trustee of the Patel Living Trust, owned the real property located at or about  
8 1787 Monterey Rd., San Jose, California, in October 2017.

9 5. Defendant Ashwin N. Patel, in individual and representative capacity as  
10 trustee of the Patel Living Trust, owned the real property located at or about  
11 1787 Monterey Rd., San Jose, California, in April 2018.

12 6. Defendant Ashwin N. Patel, in individual and representative capacity as  
13 trustee of the Patel Living Trust, owned the real property located at or about  
14 1787 Monterey Rd., San Jose, California, in May 2018.

15 7. Defendant Ashwin N. Patel, in individual and representative capacity as  
16 trustee of the Patel Living Trust, owns the real property located at or about  
17 1787 Monterey Rd., San Jose, California, currently.

18 8. Defendant Ashwin N. Patel, in individual and representative capacity as  
19 trustee of the Patel Living Trust, owned Sands Motel located at or about 1787  
20 Monterey Rd., San Jose, California, in March 2017.

21 9. Defendant Ashwin N. Patel, in individual and representative capacity as  
22 trustee of the Patel Living Trust, owned Sands Motel located at or about 1787  
23 Monterey Rd., San Jose, California, in June 2017.

24 10. Defendant Ashwin N. Patel, in individual and representative capacity as  
25 trustee of the Patel Living Trust, owned Sands Motel located at or about 1787  
26 Monterey Rd., San Jose, California, in October 2017.

27 11. Defendant Ashwin N. Patel, in individual and representative capacity as  
28 trustee of the Patel Living Trust, owned Sands Motel located at or about 1787

1 Monterey Rd., San Jose, California, in April 2018.

2 12. Defendant Ashwin N. Patel, in individual and representative capacity as  
3 trustee of the Patel Living Trust, owned Sands Motel located at or about 1787  
4 Monterey Rd., San Jose, California, in May 2018.

5 13. Defendant Ashwin N. Patel, in individual and representative capacity as  
6 trustee of the Patel Living Trust, owns Sands Motel ("Motel") located at or  
7 about 1787 Monterey Rd., San Jose, California, currently.

8 14. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained of,  
11 and alleges a joint venture and common enterprise by all such Defendants.  
12 Plaintiff is informed and believes that each of the Defendants herein,  
13 including Does 1 through 10, inclusive, is responsible in some capacity for the  
14 events herein alleged, or is a necessary party for obtaining appropriate relief.  
15 Plaintiff will seek leave to amend when the true names, capacities,  
16 connections, and responsibilities of the Defendants and Does 1 through 10,  
17 inclusive, are ascertained.

18  
19 **JURISDICTION & VENUE:**

20 15. The Court has subject matter jurisdiction over the action pursuant to 28  
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 16. Pursuant to supplemental jurisdiction, an attendant and related cause  
24 of action, arising from the same nucleus of operative facts and arising out of  
25 the same transactions, is also brought under California's Unruh Civil Rights  
26 Act, which act expressly incorporates the Americans with Disabilities Act.

27 17. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.

2  
3 **FACTUAL ALLEGATIONS:**

4 18. Plaintiff went to the Motel a number of times during the relevant  
5 statutory period including March 2017, June 2017, October 2017 (twice),  
6 April 2018 and May 2018 with the intention to avail himself of its goods or  
7 services and to assess the business for compliance with the disability access  
8 laws.

9 19. The Motel is a facility open to the public, a place of public  
10 accommodation, and a business establishment.

11 20. Parking spaces are one of the facilities, privileges, and advantages  
12 offered by Defendants to patrons of the Motel.

13 21. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
14 not provide accessible parking in conformance with the ADA Standards.

15 22. Currently, the defendants do not provide accessible parking in  
16 conformance with the ADA Standards.

17 23. Paths of travel are one of the facilities, privileges, and advantages  
18 offered by Defendants to patrons of the Motel.

19 24. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
20 not provide accessible paths of travel in conformance with the ADA Standards.

21 25. Currently, the defendants do not provide accessible paths of travel in  
22 conformance with the ADA Standards.

23 26. Guestrooms are one of the facilities, privileges, and advantages offered  
24 by Defendants to patrons of the Motel.

25 27. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
26 not provide accessible guestrooms in conformance with the ADA Standards.

27 28. Currently, the defendants do not provide accessible guestrooms in  
28 conformance with the ADA Standards.

1       29. Plaintiff personally encountered these barriers.

2       30. By failing to provide accessible facilities, the defendants denied the  
3 plaintiff full and equal access.

4       31. The lack of accessible facilities created difficulty and discomfort for the  
5 Plaintiff.

6       32. The defendants have failed to maintain in working and useable  
7 conditions those features required to provide ready access to persons with  
8 disabilities.

9       33. The barriers identified above are easily removed without much  
10 difficulty or expense. They are the types of barriers identified by the  
11 Department of Justice as presumably readily achievable to remove and, in fact,  
12 these barriers are readily achievable to remove. Moreover, there are numerous  
13 alternative accommodations that could be made to provide a greater level of  
14 access if complete removal were not achievable.

15       34. Plaintiff will return to the Motel to avail himself of goods or services and  
16 to determine compliance with the disability access laws once it is represented  
17 to him that the Motel and its facilities are accessible. Plaintiff is currently  
18 deterred from doing so because of his knowledge of the existing barriers and  
19 his uncertainty about the existence of yet other barriers on the site. If the  
20 barriers are not removed, the plaintiff will face unlawful and discriminatory  
21 barriers again.

22       35. Given the obvious and blatant nature of the barriers and violations  
23 alleged herein, the plaintiff alleges, on information and belief, that there are  
24 other violations and barriers on the site that relate to his disability. Plaintiff will  
25 amend the complaint, to provide proper notice regarding the scope of this  
26 lawsuit, once he conducts a site inspection. However, please be on notice that  
27 the plaintiff seeks to have all barriers related to his disability remedied. See  
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

36. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

37. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the  
 2 altered area, are readily accessible to and usable by individuals  
 3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 38. When a business provides parking for its customers, it must provide  
 5 accessible parking in compliance with the ADA Standards.

6 39. Here, the lack of accessible parking is a violation of the law.

7 40. When a business provides facilities such as a web site, it must provide an  
 8 accessible web site in compliance with the ADA Standards.

9 41. Here, no such accessible web site has been provided in violation of the  
 10 ADA.

11 42. When a business provides guestrooms for its customers, it must provide  
 12 accessible guestrooms in compliance with the ADA Standards.

13 43. Here, the lack of accessible guestrooms is a violation of the law.

14 44. The Safe Harbor provisions of the 2010 Standards are not applicable  
 15 here because the conditions challenged in this lawsuit do not comply with the  
 16 1991 Standards.

17 45. A public accommodation must maintain in operable working condition  
 18 those features of its facilities and equipment that are required to be readily  
 19 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

20 46. Here, the failure to ensure that the accessible facilities were available  
 21 and ready to be used by the plaintiff is a violation of the law.

22  
 23 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 24 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 25 Code § 51-53.)

26 47. Plaintiff repleads and incorporates by reference, as if fully set forth  
 27 again herein, the allegations contained in all prior paragraphs of this  
 28 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,



1 that persons with disabilities are entitled to full and equal accommodations,  
2 advantages, facilities, privileges, or services in all business establishment of  
3 every kind whatsoever within the jurisdiction of the State of California. Cal.  
4 Civ. Code §51(b).

5 48. The Unruh Act provides that a violation of the ADA is a violation of the  
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 49. Defendants' acts and omissions, as herein alleged, have violated the  
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
9 rights to full and equal use of the accommodations, advantages, facilities,  
10 privileges, or services offered.

11 50. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
12 discomfort or embarrassment for the plaintiff, the defendants are also each  
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
14 (c).)

15 51. Although the plaintiff was markedly frustrated by facing discriminatory  
16 barriers, even manifesting itself with minor and fleeting physical symptoms,  
17 the plaintiff does not value this very modest physical personal injury greater  
18 than the amount of the statutory damages.

19  
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide  
22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the  
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
25 plaintiff is not invoking section 55 of the California Civil Code and is not  
26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act, which provides for actual  
28 damages and a statutory minimum of \$4,000 for each offense.



1           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4  
5 Dated: March 14, 2019

CENTER FOR DISABILITY ACCESS

6  
7 By:



8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

Amanda Seabock, Esq.  
Attorney for plaintiff